

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 98

On (date), there was a public hearing on Bill No. ---, and it was passed on second reading by the Council. That bill provides that swap meets will be permitted in an area zoned residential, so long as a conditional use permit is issued. A client of a councilmember's law firm is the lessor of the premises leased to a development company that operates an outdoor theater on the leased premises. If the company is able to operate a swap meet within the premises, the rental is increased in favor of the firm's client.

The question is whether a councilmember may properly vote on a bill before the City Council when his law firm represents a client who would benefit financially if the bill becomes law.

The specific provision which is applicable under the facts of this case is Section 6-1.2(a)(I), Revised Ordinances of Honolulu 1978 [ROH], which states in pertinent part that:

No officer or employee of the City, except as hereinafter provided, shall:

(1) Participate, as an agent or representative of a City agency, in any official action directly affecting a business or matter in which. ..(B) by or for which a firm of which he is a member, an associate, or an employee has been engaged as a legal counselor advisor or consultant or representative in a matter directly related to such action; provided that a councilman is not precluded from voting on such matter before the Council so long as a written disclosure has been made in the event there is a conflict of interest involving this subsection and relating to such matter. [Emphasis added]

When the cited section is applied to the facts of this case, the Commission finds that the councilmember will be participating in an official action as an agent of the City in which he has stated that the lessor is a client of his law firm. That is, as an officer of the City he will be an agent (member of a committee), participating in an official action (recommendation of the committee and the adoption by Council) on Bill No.--- and the adoption will enhance the rental of the client. As such, from the councilmember's standpoint, adoption of Bill No.--- may inure to the benefits of the client.

Hence, the Commission concludes that the councilmember does have a conflict of interest and, therefore, should not participate in any of the proceedings relative to Bill No.---

On the other hand, ROH Section 6-1.2(a)(l) provides for an exception. That exception states that a member of the Council is not precluded from voting provided that a written disclosure is filed. Hence, the councilmember is not barred from voting on Bill No.---, despite the existence of a conflict of interest. Although he is permitted to vote, he may waive such privilege. However, in the instant case, he can only exercise such privilege if the Council permits him to abstain as provided in Rule 12 of the Rules of the Council. That rule states:

RULE NO.12

VOTING

1. There shall be five methods of ascertaining the decision of the Council upon any matter:

1st, by a call of the roll of the members and a record made by the City Clerk of the vote of each member;

2nd, by viva voce vote;

3rd, by rising;

4th, by ballot; and

5th, by unanimous consent.
2. Upon the request of any member of the Council, and on every bill and resolution, the City Clerk shall call the roll. Unless a member is excused from voting, his silence shall be recorded as an affirmative vote. A member may use the 'kanalua' response but once and if repeated when polled again, his vote shall be recorded as an affirmative vote. The City Clerk shall record each vote in the Journal and report to the Presiding Officer, who shall announce the result of the Council.
3. No member shall refrain from voting unless excused by the Council.
4. Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain his vote; and after the announcement of the result, no one shall be permitted to vote or to change his vote.

To summarize, ROH Section 6-1.2(a)(1) precludes the councilmember from participating in any proceeding regarding Bill No.--- before the Committee and the Council because a favorable consideration of Bill No.--- inures to the benefit of the client. However, because of the exception in the cited provision he may vote thereon, but to abstain from such proceedings, he will have to obtain the approval of the Council as prescribed in Rule 12 of the Rules of the Council.

Dated: March 12, 1981

ETHICS COMMISSION
Rev. William Smith, Chair